IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.4737/1998
DEVI SAHAI V/s STATE OF RAJASTHAN & OTHERS

DATE OF ORDER 19.2.2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Rajendra Prasad for the petitioner.
Shri B.S. Chhaba, Dy. Government Advocate.

The petitioner has filed this writ petition challenging the orders dated 1.7.1995 and 22.4.1997 as also the notice dated 7.8.7.8.95.

Grievance of the petitioner is that the respondents by notice dated 7.7.97 demanded from him a sum of Rs.3,58,820/- together with penalty amounting to Rs.500/- for the land allotted to him vide Patta No.10/91-92 measuring 238.86 sqyd. This land was allotted to him by Gram Panchayat, Khatu Shyamji. The respondents are now seeking to realise from him the said amount pursuant to the direction issued by the Director-cum-Special Secretary, Department of Panchayati Raj, Government of Rajasthan, Jaipur, vide order dated 22.4.97

Learned counsel for the petitioner argued that the Government issued order dated 22.7.97 to regularise the possession of the petitioner and also so many others. The respondents are charging premium @ Rs.310/- per sq.yd. from all other allottees, which is evident from Annex. 10,

11 and 12. In the case of the petitioner however they are realising from him such charge @ 1500/- per sqyd which is highly discriminatory inasmuch as the respondents while demanding such amount have not taken into consideration that the petitioner was in possession of the land in dispute for last more than 14 years. The so-called market price has therefore been arbitrarily fixed.

On the other hand, the learned Dy Government Advocate submits that the allotments were made by the then Sarpanch, Ladu Ram, in favour of as many as 159 persons including the petitioner. The Government upon enquiry found that such allotments were made wrongfully but keeping in view the fact that the allottee had remained in possession for long time, the Government issued circular dated 22.7.97 which was applied uniformally to such allottees. The case of the petitioner according to him, would fall in clause (3) of the said circular which pertained to those who in spite of cancellation of their Patta, raised constructions without permission. He submits that the market value would vary depending upon the location of the land allotted. Since the land allotted to the petitioner would situate on main by-pass road connecting Datan with Reengus, therefore, he has rightly been asked to pay at the commercial rate of Rs.1500/- per sqyd.

Having heard learned counsel for the parties and after perusal of the material on record, I find that this court

by order dated 21.7.2005 directed the respondents to submit the details of the persons who have been made such allotment and the land subsequently been regularised and also explain as to how uniform rates have not been charged from all such persons. Pursuant to such direction, the respondents have filed an additional affidavit on 29.8.06. A perusal of the affidavit would reveal that the rates were determined and on that basis, were charged on different rates on the basis of the survey conducted by the Additional Collector, Sikar. The survey committee suggested four different rates with regard to the residential as well as the commercial plots which respectively were Rs.180/-, Rs.363/-, Rs.650/- and Rs.1100/- per square yard. It has further submitted that the rates have been charged as per the survey report depending the location of the plot and the petitioner was required to pay as per the rates of Rs.1100/- per sqyd. as he was holding the plot measuring 238.86 sqyd. and a total sum of Rs.2,62,768/- for which payment has to be made by the petitioner.

Learned Dy. Government Advocate also submits that when the demand notice dated 7.8.97 is examined in the light of the averments of the affidavit, it becomes evident that while the affidavit states that the maximum rate for commercial use of the land of survey committed by Rs.1100/- per sqyd. but the respondent demanded from the petitioner the rate of Rs.1500/-. The total amount included the demand of Rs.3,58,320/- plus penalty of Rs.500/- but the total in

all has to be indicated to be only Rs.2,62,768/-. In the facts of the case, therefore, there appears to be no basis for the Sarpanch of the Gram Panchayat in demanding from the petitioner more amount than was payable by him as per the rates. The petitioner obviously was charged @ 1100/- because the plot allotted to him is situated on the main Reengus by-pass road. According to the learned Dy. Government Advocate, the plots are used for commercial purpose.

In the result, the writ petition is partly allowed and the charge for the Patta No.10 for the land measuring 238.86 @ 1500/- is held to be not justified but at the same time, they are liable to pay @ from Rs.1100/- and accordingly the total amount of Rs.2,62,768/- together with penalty amount of Rs.500/- which amount shall be paid by the petitioner within two months. Any further delay in making payment would carry interest @ 6% p.a.

(Mohammad Rafiq),J.

Chauhan/